

Recording Requested By:

90 FEB 15 PM 3:18

When Recorded, Mail To:

RECORDED AT REQUEST OF

FEE

Department of Health Services
Toxic Substances Control Program
Program and Administrative Support Division
Technical Services
Allen K. Wolfenden, Chief
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY
(Verner Parcels C and D)

This Covenant and Agreement ("Covenant") is made on the 12th day of February, 1990 by Lyon Communities Inc. ("Covenantor"), who is the owner of record of certain property situated in , Lathrop, County of San Joaquin, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Health Services, with reference to the following facts:

- A. The Property is located adjacent to the Sharpe Army Depot. The Sharpe Army Depot site has identified areas of soil and groundwater contamination, and is listed on the Department's Expenditure Plan for the Hazardous Substances Cleanup Bond Act of 1984, revised January 1989.
- B. The groundwater contamination from Sharpe Army Depot has migrated offsite, and is under portions of the Property. Volatile and semivolatile organic compounds, arsenic and the herbicide bromacil have been identified in the groundwater underneath portions of the Property. Volatile compounds (carbon tetrachloride; chloroform; 1,1,1-trichloroethane; trichloroethene; and tetrachloroethene) have also been detected in the soil-gas on the Property.
- C. Covenantor desires and intends that in order to protect the present or future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from hazardous wastes which has been deposited on or under the Sharpe Army Depot, or which have migrated from the Sharpe Army Depot.

ARTICLE I

GENERAL PROVISIONS

1.01 Provisions to Run With the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Section 25222.1 of the Health and Safety Code and run with the land pursuant to Section 25230. Each and all of the Restrictions are enforceable by the Department of Health Services.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agency, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II

DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Health Services and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.

ARTICLE III

DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Owner promises to restrict the use of the portion of the Property as described in Exhibit A as follows:

- 1) No owner or occupant of this Property shall extract, utilize, consume or permit to be extracted any water from below the surfaces of the ground without prior approval from the local Health District and the Department of Health Services.
- 2) All water utilized within this Property for any purpose shall be obtained from a municipal water source, unless approval from the local Health District and the Department of Health Services is obtained.
- 3) No owner or occupant shall dig, create or utilize a septic tank or any other sub-surface waste disposal system without prior approval from the local Health District and the Department of Health Services.
- 4) Prior to construction on this Property, all existing domestic and irrigation supply wells shall be abandoned pursuant to all applicable state and local regulations. However, groundwater wells, extraction systems, and associated equipment used for monitoring or other activities required for remediation by the Sharpe Army Depot, or it's agents or successors, shall remain intact and access shall not be denied.
- 5) No owner or occupant of this Property shall hinder, prevent or permit the prevention of, required remediation efforts deemed necessary by state or federal agencies to remove groundwater contamination from under the Property.

3.02 Conveyance of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.

3.03 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to enforce civil and criminal actions against the Owner as provided by law.

3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the Property. The instrument shall contain the following statement:

"The land described herein contains hazardous waste or is within 2,000 feet of land that contains hazardous waste. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists".

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, H&SC.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, H&SC.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a government agency being served, or 2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To: Lyon Communities, Inc.
1631 N. First
Suite 100
San Jose, CA 95112

Copy to: Department of Health Services
Toxic Substances Control Program
Program and Administrative Support Division
Technical Services
Allen K. Wolfenden, Chief
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320

5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Health Services. This instrument shall be recorded by the Covenantor in the County of San Joaquin within ten (10) days of the date of execution.

5.06 References. All references to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

OWNERS

By: Dick J. Randall
Title: President

Date: Feb. 12, 1990

Dick J. Randall
LYON COMMUNITIES, INC.

By: John T. Verner
Title: President

Date: Feb. 5, 1990

John T. Verner
VERNER CONSTRUCTION, INC.

DEPARTMENT OF HEALTH SERVICES

By: Ted N. Rauh
Title: CHIEF P.A.S.D.

Date: FEB. 1, 1990

Ted N. Rauh
TOXIC SUBSTANCES CONTROL PROGRAM

STATE OF CALIFORNIA)
)
 COUNTY OF Sacramento)

On February 1, 1990 before me, the undersigned,
 a Notary Public in and for said state, personally appeared
Ted N. Raub, personally known to me or proved to
 me on the basis of satisfactory evidence to be the person who
 executed the within instrument as Chief, P.A.S.D., of
 the corporation that executed the within instrument, and
 acknowledged to me that such corporation executed the same
 pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

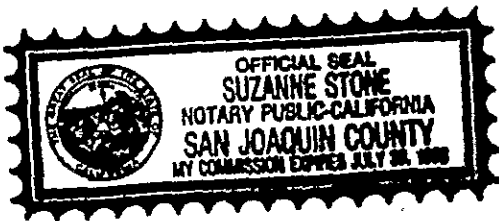


Stephen M. Di Zio
 Notary Public in and for said
 County and State

STATE OF CALIFORNIA)
 COUNTY OF San Joaquin)

On February 12th, 1990 before me, the undersigned,
 a Notary Public in and for said state, personally appeared
John T. Keener, personally known to me or proved to
 me on the basis of satisfactory evidence to be the person who
 executed the within instrument as President, of
 the corporation that executed the within instrument, and
 acknowledged to me that such corporation executed the same
 pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Suzanne Stone

Notary Public in and for said
 County and State

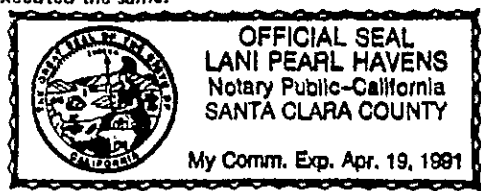
STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 19____ before me, the undersigned, a Notary Public in and for said state, personally appeared on the basis of satisfactory evidence to be the person who executed the within instrument as _____, of the Department of Health Services, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

Notary Public in and for said
County and State

STATE OF CALIFORNIA,
County of Santa Clara } ss.
On February 12, 1990, before me, Lani Pearl Havens, a Notary Public in and for said
County and State personally appeared Dick J. Randall, personally known to me or proved to me on the basis of satisfactory
evidence to be the person who executed the within instrument as _____, President and _____
personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as _____
Secretary of the corporation that executed the within and foregoing instrument on behalf of the corporation therein named and acknowledged to me that
such corporation executed the same.



WITNESS my hand and Official Seal.

Notary Public
ACKNOWLEDGMENT-CORPORATION
VTC-127

EXHIBIT A

DESCRIPTION VERNER PARCELS C AND D

All that certain real property situated in the County of San Joaquin, State of California and described with reference to the Public Land Surveys of the United States as follows:

All that fractional portion of Sections 14 and 23, Township 1 South, Range 6 East, Mount Diablo Base and Meridian, and described with reference to that certain Parcel Map filed for record in Book 11 of Parcel Maps at Page 182A, San Joaquin County Records, more particularly described as follows:

Commencing at the corner common to Sections 11, 12, 13, 14, Township 1 South, Range 6 East, Mount Diablo Base and Meridian, thence South 87° 32' 55" West 463.68 feet; thence South 0° 18' 44" West 7964.17 feet to the southeast corner of Parcel D as shown on that certain Parcel Map filed for record in Book 11 of Parcel Maps at Page 182A, San Joaquin County Records and the True Point of Beginning of the parcel herein described; thence South 89° 36' 00" West 3137.14 feet to the southwest corner of Parcel C of said Parcel Map; thence North 10° 23' 43" East 404.17 feet; thence North 89° 40' 00" East 795.92 feet; thence North 0° 11' 00" West 160.00 feet; thence South 89° 40' 00" West 766.02 feet; thence North 10° 23' 43" East 1502.44 feet; thence North 1° 57' 43" East 212.30 feet; thence North 10° 25' 43" East 477.30 feet to the northwest corner of Parcel C of said Parcel Map; thence South 89° 03' 30" East 2834.80 feet to the northeast corner of Parcel D of said Parcel Map; thence South 0° 18' 44" West 2651.10 feet to the Point of Beginning and containing 175.981 acres more or less.